

**Second Covid-19 Follow Up Inspection of the Shelby
County Men's Jail at 201 Poplar Avenue, Memphis TN
38103 On May 6-7, 2021**

Final Report

Submitted to:

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INTRODUCTION

My name is Mike Brady, and I am the Director of the Criminal Justice Division for Sabot Consulting. I am a nationally recognized expert in prison and jail operations, the Americans With Disabilities Act, and the prevention and mitigation of the spread of infectious diseases and public health in the correctional setting from an operational and non-clinical perspective.

On June 18, 2020, in the matter of Busby V Bonner (No. 2:20-cv-2359-SHL), pursuant to Federal Rule of Evidence 706, United States District Judge for The Western District of Tennessee, Western Division, The Honorable Sheryl H. Lippman, appointed me as the neutral expert witness in the field of jail and prison operations as it relates to the prevention and mitigation of the spread of infectious diseases and public health in the correctional setting.

The Inspection Order states in pertinent part:

“...The appointed expert shall provide information to the Court responsive to Plaintiffs’ Motion for Temporary Restraining Order (ECF No. 2) and render an expert opinion on the current health and safety of medically vulnerable Plaintiff-detainees at the Shelby County Jail (“the jail”) in light of the Covid-19 pandemic, including but not limited to the Facility’s compliance with the pertinent CDC and Shelby County Public Health guidelines and other applicable standards. The expert’s findings shall include, if warranted, recommendations regarding corrective measures that, in his expert opinion, should be implemented at the jail, to protect the medically-vulnerable from the COVID-19 virus at the facility....”

The medically vulnerable detainees to which the inspection order applies are defined as follows:

1. People 65 years and older
2. People with chronic lung disease or moderate to severe asthma (including chronic obstructive pulmonary disease (COPD) (including emphysema, and chronic bronchitis),
3. Idiopathic pulmonary fibrosis and cystic fibrosis;
4. People who have serious heart conditions (including heart failure, coronary heart disease, congenital heart disease, cardiomyopathies, and pulmonary hypertension);
5. People who are immunocompromised (including cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening medications);
6. People with severe obesity (body mass index [BMI] of 40 or higher);
7. People with Diabetes;
8. People with chronic kidney disease undergoing dialysis;
9. People with chronic liver disease, including cirrhosis; and

10. People with hemoglobin disorders, including sickle cell disease and thalassemia.
11. All persons currently or in the future held at the jail in pretrial custody during the COVID-19 pandemic who are at increased risk of Covid-19 complications or death because of disabilities as defined in the Americans With Disabilities Act (ADA) and Section 504 of the Rehabilitation Act.

On the 28th of January, Judge Lipman signed an order preliminarily approving the Class Action Settlement between the parties to this action in which it was agreed that I would continue in my role as the Rule 706 Court-Appointed Independent Inspector pursuant to the agreed upon terms and conditions contained in the Consent Decree attached to the Court's January 28, 2021 order.

Pursuant to paragraph 4. **Reporting** on page 2 of the Consent Decree, Defendants are required to provide me with a report containing certain information. Defendants did comply with the paragraph 4 provision except as to a subpart of 4(b). Defendants gave me the data on the number of Covid-19 tests conducted on detainees and for staff at the jail in the aggregate, but Defendants did not provide me with the information "by pod and the results of those tests" by pod.


In addition, in paragraph 5 on page 2 of the Consent Decree, Defendants did provide me with lists of the Class and Subclass as defined by the Court, and they did specify whether the class or subclass member is housed in a single cell, shared cell, or dormitory, but I continue to find that information of little value without additional information and sorted in a different way. I have made recommendations on what additional information I will need and how it should be displayed to make my time more efficient, cost effective, and my report more valuable to the parties going forward. To date the Defendants have not complied with my request.

I also reviewed my prior recommendations with Lt. Styles and found that some have been implemented, some have been implemented in a manner that the Defendants determined works best for them, some have not been implemented because of population size and physical plant restrictions, and others have not been implemented because the Sheriff has no control over release decisions, bond amounts, or placement in alternative forms of custody. I will cover what has been implemented and what has not in the recommendations section of this report.

There are several issues that continue to be of great concern to me, and some that, although newly implemented, are ineffective:

1. The inability of the Shelby County Jail to properly social distance inmates because of population size and physical plant restrictions in the Housing Units.
2. The Court Expeditor continues not have a systematic or uniform process of review, analysis or presentation of all Class Member or Subclass member medical conditions that put them at risk of serious illness or death from Covid-19, nor is there any information regarding the ability or inability of the inmate to be safely placed in alternative forms of custody in the community on a case-by-case basis. It

is my expert opinion that the Defendants do not believe this is a responsibility covered by the Consent decree or the Court's Orders. The Sheriff's Court Expeditor is very very busy with her myriad of duties. As a result of my discussions with Debra Fessenden, Chief Policy Adviser for the Sheriff, I have a better understanding of the breadth of the Chief Expeditor's role since my first follow-up inspection. As a result, how I read and interpret the Consent Decree and the Court's Orders are far different than that of the Defendant's Counsel. I remain concerned that the inmate attorneys and Criminal Justice Partners do not use community-based programs and alternative forms of custody as viable placement options for disabled inmates which is potentially an "Olmstead" ADA violation, and inconsistent with coming into compliance with current CDC guidelines.

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3. The number of at-risk Class and Subclass members who continue to remain in custody in the Jail Housing Units when there is no ability to social distance in accordance with CDC guidelines has not changed, and, as a result, are subjected to an unreasonable risk of serious illness or death. It is true that the Shelby County Jail has had zero positive Covid-19 reported cases in the jail for the last 4 plus months, and the Shelby County Jail Custody Command Staff and Wellpath should be commended for that accomplishment. However, with a 63 plus percent Covid-19 test refusal rate at day 12 of incarceration, no regular inmate serial testing taking place, over 30 Custody Officers out on sick leave due to Covid-19 infections at the time of my follow-up inspection, and a very large component of Covid-19 positive cases in the community being asymptomatic, I do not share their unbridled confidence in the accuracy of the lack of positive cases in the jail. This is not to imply that the Sheriff or Wellpath are being disingenuous. I believe they are genuinely confident in the lack of positive cases in jail.
 4. Staffing shortages at the Shelby County Jail continue to cause Class and Subclass members to be locked in their cells oftentimes for days at a time. Class and Subclass members are now getting some limited outdoor large muscle group exercise since my last inspection in April 2021, but as of May 6-7, 2021 inmates do not have regular access to the rooftop yards (The Gym). The lack of regular large muscle group exercise and being confined in their cells for extended periods of time continues to negatively impact the mental and physical well-being of this already immunocompromised Class and Subclass population.
 5. When bail is considered in Shelby County, the judicial commissioner setting bail does not take into account the economic ability or inability of the detainee to post bond. Thus, in my expert opinion, the manner in which bond amounts are set discriminates against Class Members and Subclass members many of whom may not be a current threat to public safety, who are people of color, have qualified disabilities, and simply cannot afford even a minimal bond. The current cash bail system is not necessary to ensure future court appearances or to protect public safety. It should be noted that some of the Class and Subclass members have very serious charges pending and would not be good candidates for alternative forms of custody.

On May 6, 2021, I arrived unannounced at the Shelby County Jail at 0830 hours. I was met by Lt. Styles and Captain Harris who continue to be my security escorts and resources for any and all matters related to my follow-up Covid-19 inspections.

Because my visit was unannounced, Lt. Styles and Captain Harris both had personal conflicts that prevented them from remaining with me from 0830 to 2200 hrs. on May 6th. As a result, we had to end my second follow-up spot check on May 6, 2021 at 1600hrs and extend my second follow-up inspection to the following day, May 7, 2021. Fortunately, my flight home was not scheduled until 1600hrs on May 7th from the Memphis Airport, and I was able to complete all the tasks I needed to complete on this trip. I ask the parties that I be allowed to give some advance notice for my next tour to avoid the conflicts I experienced during this tour. Having the same security escorts on my follow-up inspections is critical to their efficiency and success. Lt. Styles and Captain Harris go out of their way to get me the documents I need, and access to the people and places in the Shelby County Jail. Thank you, Lt. Styles and Captain Harris.

I also want to acknowledge Chief Fields, his staff, Wellpath's Medical Director, Dr. Donna Randolph, and HSA Jeremy Sanders, for continuing to allow me to repeatedly take time away from their busy schedules to answer my questions and provide me with the documents I needed to verify that the policies, procedures and practices about which they spoke were in writing. They are consummate professionals who care deeply about the inmates in the Shelby County Jail.

I continue to have unrestricted access to key personnel and the jail facility. Shelby County Jail command staff and Wellpath leadership continue to be transparent, responsive and open to new approaches in addressing the opportunities for improvement I discover during my inspections.

SECOND FOLLOW-UP INSPECTION OBSERVATIONS – May 6-7, 2021

On Thursday morning, May 6, 2021 at approximately 0730hrs, I notified my security escort, Lt. Styles that I would be conducting my inspection of the Shelby County Jail and that I would be arriving at the Shelby County Detention Facility at 0830. The date and time of my inspection was unannounced until one hour prior to my arrival.

EMPLOYEE ENTRANCE

There is nothing new or different to report about this process. I am satisfied that this process complies with CDC guidelines and recommendations.

MEETING WITH SHELBY COUNTY CHIEF JAILER FIELDS

I initially met with Chief Fields in his conference room to see if he had any questions regarding my prior recommendations, and to let him know what I intended to review during this second follow-up inspection. Chief Fields has been and continues to be completely candid, transparent, and cooperative during my Covid-19 inspections. Chief Fields stated that he understood my recommendations, implemented some, and acknowledged that others he did not because of staffing shortages, physical plant limitations, and limited authority as to others. As always, I appreciate the Chief's candor, transparency, and cooperative spirit. I continue to believe, and Chief Fields has demonstrated that he takes my recommendations seriously, and he will implement the process improvement recommendations as staffing permits if it is within his authority to do so.

MEDICAL

After I met with Chief Fields, I met with Wellpath HSA Jeremy Sanders, and Wellpath Medical Director, Dr. Donna Randolph. During the course of my discussions with them during my onsite visit and subsequent phone calls, I learned that outside appointments for chronic care and serious medical conditions had resumed except for Ophthalmology.

I asked Dr. Randolph to provide me with a list of the most medically fragile inmates currently housed in the Shelby County Jail, and a list of disabled inmates before the end of the day.

I asked HSA Sanders about the current Covid-19 testing refusal rate for newly incarcerated inmates who are offered PCR tests on day 12 of their 14-day medical isolation. Mr. Sanders told me the refusal rate remains steady at approximately 63 percent. I asked him if they offer the PCR test to the inmates in medical isolation multiple times, and he stated that they do not, but they inform the inmate if they change their minds, they can always get the test. He also confirmed that at the time of my second follow-up inspection there were no Covid-19 positive inmates in the Shelby County Jail and there had not been a positive case since December of 2019.

When I asked Dr. Randolph if she is concerned about the most medically fragile inmates remaining in custody, she stated she is concerned about it, but that she has no control over their release decisions. Many of these inmates are elderly and severely disabled. I asked her if the Court Expeditor goes over the current list of vulnerable and ADA inmates with her on a regular basis and she stated that she does not. Dr. Randolph did state that she does bring inmates to the Court Expeditor's attention that she believes are the most medically fragile.

Next, I inquired about the Covid-19 vaccination education and administration process at the Shelby County Jail. Mr. Sanders told me that everyone who comes into the Shelby County Jail is provided with vaccine education information and is offered a Covid-19 vaccination in a one-on-one setting. I have reviewed copies of the vaccine education materials some of which I provided to the Shelby County Jail, and while the education materials are adequate, the manner in which the inmates are provided the information is ineffective.

First, some of the education materials are at a reading level that is far higher than the reading level of many of the inmates.

Second, during the course of my follow-up inspection, the materials were posted in places that were not readily accessible to the inmate population.

Third, it is ineffective to just hand education materials to inmates upon their arrival at the jail and talk at them. Most inmates who arrive at the jail are stressed out, distracted, dysregulated, under the influence, decompensated, etc. To expect a newly incarcerated inmate to be open to reading vaccine education materials, and to be receptive to a taking a controversial vaccine administered by a government agency which the African American inmate population distrusts is wrong headed and doomed for failure.

As I will cover later in this report, when I took the time to talk to the mostly African American inmate population in a one-on-one setting and also in groups the reception to taking the vaccine was higher. Lt. Styles, Captain Harris, and I went to less than 20 percent of the Housing Units and uniformly heard inmates say, “Nobody ever explained it to us like this,” “We haven’t seen any education materials. Can you get us some education materials?” We were able to recruit an additional 37 inmates to take the vaccine in about 4 hours. Inmates want real talk in a simple and understandable terms that they can understand. It is time and labor intensive, but for the vaccine program to be viable and effective, it needs to be done in every Housing Unit multiple times.

Moreover, Wellpath does not have ready access to the Covid-19 vaccine, nor can they administer the vaccine to inmates. The City of Memphis possesses the vaccines, controls the number of doses available to the Shelby County Jail as well as the days the EMTs will be onsite to administer the vaccines. Over the course of several conversations with Mr. Sanders he told me candidly that Wellpath has no control over the vaccine program. Their only role is to provide the City of Memphis the number of vaccines they need. Twice this month, the EMTs failed to appear when they were scheduled to appear to administer first and second doses for unknown reasons. At the time of my second onsite inspection a mere 242 first doses of the vaccine had been administered. The 37 additional inmates who we recruited to take the vaccine during my Housing Unit inspections had waited over two weeks for their first injection, and as of the date of this report, I have little confidence that they have received their vaccines. As of the last time I checked only 273 inmates had been vaccinated with their first dose and were waiting on their second dose.

In my expert opinion, this critical inmate vaccine program is completely ineffective, and under its current structure will have little, if any, impact on protecting the mostly African American inmate population from contracting this highly contagious oftentimes deadly Covid-19 virus.

Having a vaccine program that is poorly thought out, poorly administered, and poorly received is the equivalent of not having a vaccine program at all. Taken to its extreme, if the Shelby County Jail has vaccines on hand but no mechanism to administer the vaccines, one could absurdly argue they have fulfilled their obligations pursuant to the Consent Decree. I cannot imagine that is what the parties and the Court had in mind when approving the Settlement Agreement/Consent Decree. If it is, I strongly disagree with the construct of the Settlement Agreement.

INTAKE/BOOKING/RELEASE

During this follow-up inspection I inspected the Intake/Booking/Release area and there is nothing new to report here. The Shelby County Jail and Wellpath continue to do a good job in this area. The Covid-19 test offering at day 12 does not allow the Wellpath staff to offer the Covid-19 test to inmates multiple times during multiple contacts, and that is my only criticism.

MEDICAL ISOLATION LOWER-LEVEL PODS A-K

I inspected this area and there is nothing new to report that is different than my last inspection. Lt. Lee continues to do an excellent job of social distancing inmates for court appearances in the holding cells and limiting the number of inmates who are present for in person or video court appearances. However, on the fifth floor which are dormitory style Housing Unit Pods, I witnessed video arraignments where inmates were sitting right next to each other and mask compliance and social distancing compliance was poor. I am unsure of who is in charge of the 5th floor video arraignments, but if it is Lt. Lee, I ask that she correct this process deficiency.

FLOORS 2-6

I inspected floors 2-6 for social distancing, mask compliance, availability of hand sanitizers, masks, soap, and cleaning supplies. Social distancing was non-existent, and inmate mask compliance was poor. Staff mask compliance was excellent. There were adequate masks, hand sanitizer, soap and cleaning supplies. However, the inmate masks were beginning to look somewhat tattered.

Half of each floor Housing Units were locked down, and the other half were programming because of staff shortages. When I went to the 6th floor, the inmates housed on the 6th floor were out on the rooftop yard (The Gym). However, there are 3 yards on the roof and only one was being utilized due to posted position staffing shortages.

Staffing shortages in the Housing Units has been a chronic problem for the Shelby County Jail as far back as my first inspection in June of 2020, and when you couple over 30 custody staff currently out because of Covid-19, it exacerbates the problem. As a result, inmates are locked in their cells for 24 hours a day oftentimes for days at a time if not an entire week. In my expert opinion, this creates a serious risk of harm to the mental and physical health of Class and Subclass inmates.

While I was inspecting these Housing Units, we did an impromptu vaccine education program with the inmates in about 15-20 percent of the Housing Units. What I heard from the inmates was that they had received no education materials, and nobody had taken the time to explain in understandable terms the benefits and risks of taking the Covid-19 vaccine. When Captain Harris, Lt. Styles, and I took the time to explain why this mostly African American population should take the vaccine, the acceptance rate increased with others willing to consider taking the vaccine after they had reviewed the vaccine education materials and thought about it.

It became clear to me that because of staffing shortages, and the lack of control of the vaccine program by Wellpath and the Shelby County Jail, inmates were not being properly educated about the health benefits of taking the vaccine while dispelling misinformation and rumors about how dangerous the vaccines are. There is an inherent cultural distrust of government medical programs that continues to exist as a result of the Tuskegee Experiment and other government betrayals like the Greenwood Massacre in Tulsa, Oklahoma.

COURT EXPEDITOR

The Court Expeditor continues not have a systematic or uniform process of review, analysis or presentation of Class Member or Subclass member medical conditions that put them at risk of serious illness or death from Covid-19, nor is there any information regarding the ability of the inmate to be safely placed in alternative forms of custody in the community.

The Court Expeditor is very busy, and things have improved since my first follow-up inspection, but I remain concerned that the inmate attorneys and Criminal Justice Partners do not use community-based programs and alternative forms of custody as viable placement options which is potentially an “Olmstead” violation and a violation of the American’s with Disabilities Act. As an example, the Pre-Trial Services grant for active GPS units expired. I saw no efforts to seek alternative funding for GPS units. In a phone conversation with the Shelby County Chief Jailer, I asked him to ask the Sheriff if he would be willing to use salary savings from vacant positions to fund the GPS initiative for a year going forward. The Chief Fields committed to speaking with Sheriff Bonner about the issue. As of today’s date, I have not heard the result of that conversation, but will follow-up with the Chief on my next inspection.

The Court Expeditor still does not have an organized robust tracking system developed that allows me to look at the number of Class or Subclass member cases that have been presented to the court with a recommendation for release or placement into an alternative form of custody. Having said that, the Court Expeditor has now been provided with additional help that should result in a more robust tracking and reporting process going forward.

I sincerely believe that Ms. Best is deeply committed to her work but does not have the bandwidth to perform all that is asked of her. The real challenge here is the common defense of defendants that the release of low-level class members to alternative forms of custody or on their own recognizance is out of the Sheriff’s control, and as a result Sheriff Bonner’s hands are tied. I believe these are good faith representations by the Sheriff.

In addition, I do not believe the defendants believe that the Court Expeditor is subject to the consent decree and that she has any obligation to present this information to the Shelby County Criminal Courts for consideration. Doing so, in their view, makes the Court Expeditor an advocate for the inmate population. The parties may want to clarify this issue and paragraph 8 of the consent decree.

To remedy these problems, it would be my expert recommendation that the parties consider making the Shelby County a party to this action which will go a long way toward ending the siloed responsibilities and authorities of the various Shelby County entities. There is really no excuse for many offenders who are mainly poor people of color, disabled, medically vulnerable and not a current threat to public safety not to be safely released to the community into structured and supervised environments or placed on home confinement.

Another option is for the parties to ask the Department of Justice Civil Rights Division to conduct an independent investigation pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA) as to whether the actions or lack of action by Shelby County to remedy the problems identified in my reports are a violation of the ADA, the Olmstead decision, and the 8th Amendment.

POPULATION MANAGEMENT

The Shelby County Jail inmate population continues to hover in the low 1900s. In my first follow-up inspection report, I recommended that the jail population be reduced by 50 percent in order to comply with the CDC social distancing guidelines for Correctional and Detention Facilities. No real efforts have been made to implement my recommendation in this area. Defendant's position is that the Sheriff has no control over release decisions. While I respect the Sheriff's position, and believe it is sincere, there are options available to the parties and the Federal Court that would eliminate these siloed authorities.

Because of the current size of the inmate population, and the severe staffing shortages, inmates are being denied adequate levels of out of cell time for large muscle group exercise, and they cannot properly social distance consistent with current CDC guidelines. Without a significant drop in the size of the inmate population these dangerous conditions will continue to exist going forward.

Moreover, it is my expert opinion that the Shelby County vaccine program for the Shelby County Jail inmate population is poorly conceived, poorly administered, and completely ineffective in protecting the vulnerable inmate Class and Subclass members.

The totality of the circumstances in the Shelby County Jail leads me to the inescapable conclusion that Class and Subclass inmates at the current population levels coupled with chronic severe staffing shortages and the completely ineffective vaccine program are being placed at an unreasonable risk of harm for serious illness or death from the Covid-19 virus.

STAFFING SHORTAGES

Currently the jail has 157 security staff vacancies, and the Sheriff's Department is experiencing difficulty in their recruitment efforts to fill those vacancies. In addition, a recent staffing study that was completed found that the actual need for security staff is over 300 additional positions. Having significant staffing shortages like these is a major impediment to consistently providing routine programs, services, and activities to the vulnerable inmates in the jail. On this second follow-up inspection, the staffing shortages continue to be the major cause of the Class and Subclass members being locked down for days if not weeks at a time.

JAIL VENTILATION SYSTEM

I did not revisit this issue during this follow-up inspection.

COVID-19 VACCINE EDUCATION AND ADMINISTRATION

During the course of my second Covid-19 follow-up inspection, I examined the Covid-19 vaccine education and administration program at the Shelby County Jail.

As of the dates of my onsite inspection on May 6-7, 2021, I reviewed the Covid-19 education materials provided to the inmates prior to my arrival, and as I walked through each Housing Unit, I looked for the Covid-19 education materials to see if they were readily available to inmates and written in simple terms.

What I observed was an education program that, while well-intentioned, is inadequate and ineffective. When an inmate is booked into the Shelby County Jail, many of them are stressed out, dysregulated, and under the influence. Others are seriously mentally ill, learning disabled, or intellectually disabled.

Moreover, given that 90% of the inmates who are housed in the Shelby County jail are African American, there is a deep-seated cultural mistrust of government sponsored programs especially offerings of medical treatment. We need not look too far back in history to find the Tuskegee Experiment which did not end until 1972, and the Tulsa, Greenwood Massacre. There is a plethora of other events that have caused the African American population to be very wary of any offerings by a government agency.

Wellpath does its best to educate inmates on the benefits of taking the vaccine upon arrival and to offer them the opportunity to take the vaccine when they arrive at the jail. However, it is my expert opinion, these efforts are inadequate and ineffective because the amount of time and personnel necessary to properly educate distrustful inmates who not only have a cultural distrust, but also read and hear about the recent problems with the Johnson and Johnson vaccine that caused the deaths of several women. There is also a tremendous amount of misinformation in the news and circulating in the ethnic communities that an effective vaccine education program needs to overcome. Handing an inmate an information sheet, telling them that the vaccine is safe, and offering them a vaccine during a single limited time encounter is doomed from the outset.

The Shelby County custody staff also make limited efforts to educate inmates on the benefits of taking the vaccine by posting vaccine educational materials in the Housing Units, providing vaccine education materials on request, and showing a PSA featuring President Barack Obama, Charles Barkley, and Shaquille O'Neil. I had the opportunity to preview the PSA while I was onsite. However, the vaccine education materials were posted in a spot that was not highly visible and readily accessible to inmates. In addition, due to severe staffing shortages, there are insufficient personnel to do a more labor intensive and individualized education program.

During my inspection of the Housing Units Pods, I spoke with many inmates who told me they had not seen any education materials, nor had anyone explained the benefits of taking

the vaccine like Lt. Styles, Captain Harris and I were doing for them. I asked about their underlying medical conditions and explained what would happen if they got sick. There were inmates with heart conditions, hypertension, diabetes, asthma, renal failure, HIV, and more. The inmates also expressed a deep distrust of the vaccine itself worrying that they would suffer serious illness or death from taking the vaccine like they read about or heard about. Even within the Housing Unit Pods, there are spokespersons (shot callers) who actively discouraged inmates from taking the vaccine. In a custodial setting, if the shot callers say no, all the inmates will get in line and refuse the vaccine. We were able to overcome these obstacles in the few Housing Unit Pods where we were able to speak with the inmates individually and as a group. There were as many fears and objections to taking the vaccines as there were inmates. However, because we took the time to explain the benefits of taking the vaccine and the very real dangers of remaining unvaccinated while in the Shelby County Jail, we were able to recruit 37 additional vaccine takers. While these additional 37 vaccine volunteers should have been able to get their vaccines within 48 hours, they had to wait for at least two weeks to receive their first dose of the vaccines for the reasons explained below.

Finally, much to my surprise the Shelby County Jail nor Wellpath has any control over the Covid-19 Vaccination Program. The program is totally controlled by the City of Memphis. The City of Memphis tells the jail how many vaccines they can have, when they can be administered, and only allows Memphis City EMTs to administer the vaccines. There are no vaccines stored on site that could be administered immediately upon request, nor are any Wellpath doctors or nurses authorized to administer the vaccines to inmates. The only role of the onsite healthcare provider is to let the City of Memphis know the number of vaccines they need in a given week. On at least two occasions between the dates of my onsite inspection and the penning of this report, the City of Memphis EMTs cancelled their scheduled time to administer vaccines to the Shelby County inmates. Clearly the provision of vaccines to the Shelby County Jail inmate population is a very low priority for the City of Memphis.

As a result of the totality of the circumstances outlined above, it is my expert opinion that the Covid-19 vaccine education and administration program at the Shelby County jail is completely ineffective and does little to protect the vulnerable Class and Subclass members who are currently housed in the Shelby County Jail. Without a major restructuring of the Covid-19 vaccine education and administration program, it is of little or no value in keeping Class and Subclass members safe from the Covid-19 virus.

PREVIOUS RECOMMENDATIONS

Comments in Red are from my first follow-up inspection

Comments in Blue are from my second follow-up inspection

These findings and recommendations are not in order of importance.

RECOMMENDATION #1

1. It is recommended that Wellpath move to a 14-day medical isolation with a nasal pharyngeal test-based strategy for symptomatic and asymptomatic inmates who are newly booked in the jail. The tests should occur between day 3 and day 6 for the initial test, and between day 10 and day 12 for the second test. All inmates in medical isolation must be asymptomatic for two consecutive days subsequent to the final test results being received before they can be released to general population. Covid-19 test refusals should be considered positive tests and subject to a 21-day isolation with no movement. **Implemented w a single PCR Test at day 12. This date was chosen because of high inmate turnover from day 2-11. Unfortunately, the refusal rate is approximately 66% rendering the Covid-19 testing program ineffective.** **This continues to be the case as of May 6-7.**
2. It is recommended that Wellpath and the jail command staff identify living units where the vulnerable population can be sequestered away from the rest of the general population inmates without losing their privileges or dayroom time consistent with their security level. The most medically fragile inmates and the inmates that are at the highest risk of serious illness or death if they contract the Covid-19 virus should be housed near the medical unit in case there is a white alarm. Areas that could be considered are the third floor and the Annex. Custody might be able to open the sixth floor living units which have 192 beds for the Level 7 inmates currently housed on the 3rd floor and move some 3rd floor inmates to the empty cells in the Annex. **Implemented to the best of their ability given the physical plant limitations. Some of the most medically fragile inmates are located by the nursing station on the second floor of the jail. Some have been moved to a solid door setting in the Jail Annex. Some remain in Housing Units where there are open bars, but the jail has placed plexiglass over the open bars to emulate a solid door cell. The majority remain in Housing Units with open bars. During my May 6-7 onsite tour, I identified two additional solid door Housing Pods that could easily be used for housing vulnerable class and subclass members. As I recall those Housing Unit Pods are 4C and 3C.**

RECOMMENDATION #2

1. Consult with Dr. Bruce Randolph, Shelby County Health Officer, to see if he would be amenable to adding detention facilities to Shelby County Health Directive #7 or issuing a separate health directive for detention facilities in Shelby County. The

- language in the directive could read that “Any person detained in a detention facility should be isolated from the rest of the inmate population for 14 days if they are not eligible for ROR and cannot make bond. If the detained person is eligible for ROR or can make bond, they should be released, provided with a copy of Shelby County Health Directive #7 dated June 22, 2020 and instructed to follow that directive upon release. Nothing in this directive is intended to delay or impede the release of detained individuals if they are eligible to be released”. This is in the best interest of public health. Detained people are members of the Shelby County community and should be protected from unreasonable risks of infection just like non-detained persons in Shelby County. **The Jail in consultation with the Courts, have implemented a new process by which inmates are only brought down to the court holding cells when they are needed for their court appearance in person or via video conference. No positive inmates are making court appearances of any kind, and only inmates who may have a chance to be released on their own recognizance are brought to the holding cells in small numbers for video or in person visits. I am satisfied that this practice is much safer. This process continues to work well, but Lt. Lee needs to take corrective action on the 5th Floor during video arraignments to ensure adequate social distancing and inmate mask compliance.**
2. Consult with the General Sessions Court and Criminal Court and ask the Judges to use the existing video technology located in holding tanks LLR and LLS for arraignments, bond hearings, and other court proceedings that would not violate the inmate’s 5th or 6th amendment rights. In March, the Tennessee State Supreme Court issued an emergency order suspending in person court appearances for two weeks, but I am unaware of the validity of this order today. Technology such as Skype, Zoom, Microsoft Team, and WebEx are also available and could be deployed in a cost effective and efficient manner while limiting the exposure of vulnerable inmates to infection. Ms. Best, the Sheriff’s Office Expeditor, is a former judge and an attorney and could be very helpful in explaining the risk of spreading the Covid-19 virus among the inmate population if the court continues to demand the inmates appear in, at, or near the Courts in large holding tanks. The use of video arraignments, bond hearings, and other appearances would go a long way in reducing the risk of vulnerable inmates getting infected with the Covid-19 virus. **The jail and the Courts have substantially increased video court appearances. However, the Courts resumed normal operations on March 15, 2021, and this could increase the risk of inadvertently introducing the virus into the jails. Having said that, from my observations during the follow-up inspection, I believe that a good faith effort has been made to mitigate the introduction of the Covid-19 virus into the jails. As of my May 6-7 onsite follow-up inspection this continues to work very well reducing the exposure of Class and Subclass members to the Covid-19 virus.**
 3. Wellpath leadership needs to be more aggressive and more vocal about protecting the vulnerable inmates in their care. There are several practices that take place in the jail that are potentially harmful to their patients, and they should not be allowed to continue. I recognize that Wellpath leadership feels powerless to insist that those

harmful practices be discontinued, but in my expert opinion, Wellpath should have brought those harmful practices, at a minimum, to the attention of Dr. Bruce Randolph and documented that those harmful practices were brought to the attention of whatever entity they notified including the Court. Judges can be dismissive, but it is the responsibility of the medical provider to protect the health of the inmates in their charge and to speak up and advocate for the safety of their patients. I know this is an uncomfortable recommendation, but it is the right thing to do. Doing the right thing is not always easy, but it is always the right thing to do. See above. This is a difficult situation to be in, but I believe that Wellpath is now more of an active participant than on my last visit. The Court Expeditor does not seek information from Wellpath on the Class and Subclass members on a regular basis. She only looks at inmates over 60 and those that are the most medically fragile that Wellpath brings to her attention. This needs to change. The Court Expeditor is on the regular phone calls with Wellpath and Dr. Randolph does provide the Court Expeditor with the most fragile inmate names and medical conditions that she believes should not be housed in the jail. However, as I stated earlier, based on the responses from defendants and their counsel, it is my expert opinion that they do not agree that the Court Expeditor function falls under the jurisdiction of the consent decree. This needs to be clarified.

FINDING #3

1. The Shelby County Jail is not maximizing its efforts to enforce social distancing in its living units and should consider rethinking how it programs inmates in all areas of the jail. Unfortunately, except in the dormitories on the 5th and 6th floors, social distancing is not possible at the current population levels. Severe custody staffing shortages limit the Jail Command Staff from using the rooftop exercise yards simultaneously with dayroom time in the Housing Units. Even if that were to occur regularly, proper social distancing would not be achievable in my expert opinion. During my May 6-7 follow-up inspection, there was no inmate social distancing occurring on any floor in the jail during out of cell time. Moreover, due to severe staffing shortages, inmates do not have regular access to the Gym on the roof, and as a result, for the most part, out of cell time is limited to Housing Unit Pod Dayrooms.

RECOMMENDATION #3

1. Jail Command Staff could consider allowing fewer inmates in the dayroom area at the same time. By reducing the number of inmates in the dayroom at one time while continuing to enforce the mandatory mask order for staff and inmates who are in the dayroom, the risk of infecting others with the Covid-19 virus will be reduced. As an example, only allowing 6-8 inmates out in the dayroom at the same time on the 3rd, 4th, 5th, and 6th floors vs allowing 20 inmates out in the dayroom at the same time will substantially reduce the risk of person-to-person infection. In the dormitory living units, staff can put some inmates on bunk status until it is time for

them to program in the dayroom. It is critical that the security officers enforce the directive that inmates properly wear masks. I did not physically go into the asymptomatic medical isolation units, but those inmates should only be coming out alone with masks properly worn until their medical isolation is lifted. **Social distancing compliant with CDC guidelines is not possible in this jail given the size of the inmate population and the physical plant limitations. Social distancing consistent with CDC guidelines will only be possible by reducing the jail population to 50% of design capacity if then. There are a significant number of inmates in the Shelby County Jail that could be safely placed in structured and supervised environments in the community, and some that only remain in jail because they are economically disadvantaged people of color who cannot afford even a minimal bond. I continue to recommend a significant reduction in the Shelby County Jail population.**

RECOMMENDATION #4

1. At the daily shift supervisors meeting, jail command staff should issue a directive to the floor Sergeants, Lieutenants, and Captains requiring them to direct living unit security staff to distribute free soap to the inmates in every unit twice a week until further notice. Furthermore, living unit security staff should provide each new inmate who enters the living unit with an information sheet that provides the inmate with Covid-19 education materials and a statement that they are entitled to free soap twice a week and that they will not be written up if they have more than one bar of soap in their possession. If security staff do not follow this directive, they should be disciplined. **Soap, Mask, and Hand Sanitizer availability has improved dramatically. I did not see any evidence of systemic problems with the distribution of these materials. I will review again on my next follow-up inspection. On this inspection, soap, masks, hand sanitizer, and cleaning supplies were readily available. I did not receive any inmate complaints about this issue during my onsite inspection.**

RECOMMENDATION #5

1. Twice a week, every living unit in the jail should have a deep cleaning overseen by the security officer and the living units should be inspected by the floor sergeant. Inmates should have the opportunity to clean their cells every day at a specified time that does not take away from their dayroom time. If the living unit is not spic and span, the inmate's dayroom time should be suspended until such time as the living unit is spic and span. In addition, the living unit security officer should be disciplined for not keeping their living unit clean. Taking pride in your work area is a fundamental principal and best practice for a paramilitary organization. **While there was some improvement in this area, during my follow-up inspection, I still found Housing Units and showers that were unsanitary including one right across from the 2nd floor Nursing Station that housed medically fragile inmates. This is inexcusable. The newly appointed Compliance Captain, Captain Harrison, should**

routinely inspect the Housing Units, common areas and showers to ensure they are clean and disinfected regularly. I did not find any cleanliness issues during my May 6-7 onsite inspection. The environmental team led by Dwayne Johnson have addressed my previous concerns. I will continue to monitor this on my next onsite follow-up inspection.

RECOMMENDATION #6

1. Floor Sergeants, Lieutenants, and Captains need to be hypervigilant in enforcing the mandatory mask directive for staff and inmates. In fact, they need to be hypervigilant in enforcing all of the Covid-19 policies, procedures, and practices. There was a vast improvement in this area. I did not see any custody staff or healthcare staff with their masks down below their noses. All staff and 95 percent of inmates were mask compliant in the Housing Units and in the Court holding cells. No jail will ever be perfect in this area, and the Shelby County Jail is no different, but the Command staff should be commended for the increased compliance in this area. It is my expert opinion that as a result of severe staffing shortages and a lack of supervision, the mandatory mask directives are not being enforced.
2. It is critical that supervisors maintain their professional distance from subordinates. Overfamiliarity breeds contempt and as a result supervisors become unwilling to enforce policy and discipline non-compliant subordinates. This will poison the well, and all the great work that management has done to fight the spread of this virus will go for naught. Many of the vulnerable inmates will unnecessarily become seriously ill and die. This issue has been resolved. I did not see any overfamiliarity or clustering of staff during the course of my follow-up inspection. No issue on second follow-up inspection.
3. I recommend that Chief Fields and Assistant Chief Hubbard increase their presence on the decks and spot check compliance with the Covid-19 policies, procedures, and practices including the cleanliness of the living units, dayrooms, and bathrooms. While I did not ask about this directly, from the source documents I reviewed, it is clear that Chief Fields' and Assistant Chief Hubbard's presence and active participation in the day-to-day operations of the Shelby Jail are seen and felt. No changes here.
4. I recommend that the jail consider creating a compliance unit whose sole responsibility is to audit compliance with department policies, procedures, and practices. This unit can develop an internal audit tool and audit the jail quarterly for compliance. A quarterly report then should be filed with command staff and a corrective action plan should be developed to correct any identified deficiencies. This is important to protect the vulnerable inmates from an unreasonable risk of harm due to policy violations. A Compliance Unit of one has been created and Compliance Captain Harris accompanied me throughout my follow-up inspection. This Unit will go a long way to ensure consistent compliance with the Covid-19

policies, procedures and directives, and she will be able to immediately address any episodic violations that are occurring. When more staff are available, I recommend that at least 3 positions be added to the Compliance Unit, and their presences on the decks of the Shelby County Jail should be a daily occurrence.

RECOMMENDATION #7

1. Create a Covid-19 information sheet that is at a 6th grade reading level. This information sheet should be provided to every inmate who is booked in the county jail and again when they reach their assigned housing unit after being taken off medical isolation. It should also be posted on the wall of every living unit. The living unit security officer should make sure the inmate understands the information on the sheet when they orient the inmate to the living unit rules and regulations. This information sheet should be available in audio and large print for the visually impaired, hearing impaired, and blind. I did see Covid-19 fact sheets and educational materials on the wall, but I did not inquire about the 6th grade reading level materials on this follow-up inspection. I will examine this issue more closely on my next follow-up inspection. Not reviewed on the second follow-up inspection due to time constraints.

FINDING #8

1. Cleaning supplies for high touch surfaces such as telephones and kiosks are not readily available for inmates to use after each inmate uses those high touch items. I did see cleaning supplies in bottles in each Housing Unit available for inmate use. No changes here, and no inmate complaints.

RECOMMENDATION #8

1. Place an EPA approved cleaning solution in a spray bottle with a supply of paper towels in an area in the living unit where inmates can readily access it for cleaning the phone, kiosk and other high touch surfaces after every use. The jail is a direct supervision jail, and security staff are in the living units and can easily supervise its use or assign a pod worker to that responsibility. Many inmates are indigent and assigning inmates with a pay number at .20 to .50 cents an hour will allow the inmate pod worker job to be attractive. First Watch and Second Watch can each have their own pod workers to assist the housing unit security officer with the management of the cleaning supplies. The cleaning supplies were readily available. No changes here.

RECOMMENDATION #9

1. Issue the inmate population two cloth masks one of which can be exchanged with the weekly laundry exchange. During laundry, the masks should be inspected and replaced if they are in disrepair. Masks should not be sprayed with Bio vex. The

manufactures warnings state that Bio vex is considered to be a mild irritant and can cause irritation of the eyes, ears and throat. Vulnerable inmates may have an adverse reaction to this substance being sprayed on their masks especially those with COPD or moderate to severe asthma. **Inmates I interviewed had adequate cloth masks and they can be exchanged during laundry exchange. Bio vex is no longer used on masks. Some inmates choose to launder their own masks. Some inmate masks were looking tattered. Inmate masks should be inspected and changed when this is observed.**

RECOMMENDATION #10

1. Wellpath may want to consider hiring a Clinical Psychologist to test for intellectual disabilities and learning disabilities. Some experts have found that there may be as many as 2-4% of the inmate population that are intellectually disabled with a much smaller percentage being profoundly intellectually disabled needing high adaptive supports and protection from victimization. **This recommendation was not adopted. This continues to be a problem and is a violation of the ADA as to subclass members.**

FINDING #11

1. During my inspection and interviews, I came to the conclusion that there is no concentrated and coordinated effort to assemble and present information to the courts regarding an inmate's medical conditions that may make him vulnerable to serious illness or death while housed in the jail. Moreover, while I find Mischelle Best, the Court Expeditor, to be hard working and passionate about her job, I am concerned she is spread too thin and has to do the job of a competent criminal defense attorney in addition to her other duties. Nor is there any consistent multi-disciplinary effort within the jail to secure alternative custody venues for vulnerable inmates. I found that a significant number of these inmates had very serious charges, but some have been charged with garden variety felonies and, in my expert opinion, because of their medical condition, they are not a current threat to public safety if they were placed in a structured and supervised environment. **This has not changed dramatically. Defendants believe that this would amount to advocating on behalf of inmates and as a result the Court Expeditor cannot advocate for inmate's release. I respectfully disagree with this position especially in a global healthcare crisis.**

RECOMMENDATION # 11

1. Create a multi-disciplinary task force within the jail to present the medical conditions of the inmates who along with their non-violent offenses make them good candidates for release to alternative custodial settings. Technology has come a long way and alternatives custodial environments work well in many other states and jurisdictions. **I left this finding AND recommendation in because this is such a critical component to not exposing Class and Subclass members to an unreasonable**

risk of serious illness or death from being exposed to the Covid-19 virus or any of the significantly more contagious and more deadly variants like the B.1.1.7 variant or others from South Africa, Brazil, etc.

The Court Expeditor function is understaffed, and the manner in which the data is collected is unorganized, sporadic, and ineffective. The manner in which the information regarding the medical conditions of the immunocompromised is monitored, collected and presented to the Courts with recommendations for alternative placements in the community is dysfunctional, unorganized, inconsistent, and ineffective.

The Court Expeditor has many tasks and has received little or no guidance on how to interface with medical and mental health on a daily basis, the breadth and depth of what information to collect, what information to present, what recommendations to make, how store and display that information, and how to track what if any action the Court has taken in response to her recommendations if she is making recommendations.

As a result, many Class and Subclass members who are immunocompromised with serious medical/mental health conditions and disabilities who could be safely placed in structured and supervised programs in the community instead are exposed to an unreasonable risk of serious injury or death in a jail that cannot enforce social distancing or provide the out of cell time and large muscle group exercise critical to the physical and mental well-being of this vulnerable population.

Again I strongly recommend that Court Expeditor function be reimaged and restructured into a larger office with more personnel charged with gathering and presenting information regarding the Class and Subclass healthcare conditions, available alternative community based structured and supervised placements including but not limited to board and care facilities, residential treatment programs for substance abuse and dual diagnosis, GPS, home confinement, mental health treatment programs or being released on their own recognizance for those who are being held in jail because they are economically disadvantaged people of color. I was too critical of the Court Expeditor in my first follow-up inspection because her duties are many, she was understaffed, and the defendants do not believe the Consent Decree applies to her and her job function. This needs to be clarified.

FINDINGS AND RECOMMENDATIONS FROM FIRST FOLLOW-UP COVID-19 INSPECTION

FINDING #1

1. The Shelby County Jail, because of population size and physical plant limitations, does not have the ability to properly social distance inmates in the higher security levels. If social distancing did occur consistent with CDC guidelines it would result in inmates receiving little or no out of cell time for recreation time/large muscle group exercise. Inmates receiving adequate out of cell time/large muscle group exercise has already been cut severely because of staffing shortages.

RECOMMENDATION #1

1. The size of the Shelby County Jail inmate population needs to be reduced by up to 50% in order to achieve social distancing consistent with CDC guidelines in order to effectively prevent/mitigate serious illness or death in the inmate population. Time is of the essence given the high vaccine refusal rate which is approximately 75%, The high refusal rate according to high-ranking officials in the Shelby County Jail is in part because of the distrust of government by the African American population stemming back to the “Tuskegee Experiment” and other civil rights atrocities. Moreover, at the time of my inspection only 22 inmates had been vaccinated. *There has been no movement in this area because the defendants contend release decisions are out of their control. The parties may want to consider joining Shelby County as a party to this action to end the silos of responsibilities and authority. The size of the jail population combined with severe staffing shortages make the conditions of confinement dangerous for Class and Subclass members. Only 273 inmates have been vaccinated as I pen this report.*

RECOMMENDATION #2

1. The Shelby County Jail and Wellpath should create a comprehensive, culturally competent vaccine education program for current and future inmates that will demonstrate to the inmate population that the vaccines are safe and effective. Until the majority of inmates have been vaccinated at the Shelby County Jail, the prevention/mitigation effect is de minimis. *As noted above, the Shelby County Jail vaccination education and administration program is completely ineffective and there is no culturally competent education program available to inmates. I will make separate recommendations as a result of my May 6-7 follow-up inspection.*

FINDING #2

1. The Court Expeditor function is completely ineffective in presenting Class and Subclass member healthcare information to the Court for them to consider in ROR

decisions, Bond decisions, and safe alternative placements in structured and supervised environments in the community. The Court Expeditor function is severely understaffed, and the manner in which data is collected, presented, and preserved is dysfunctional and unreliable. Less than 1% of the Class and Subclass healthcare information has been submitted to the Court for consideration. This is a serious problem that places Class and Subclass members at an unreasonable risk of serious illness or death while in the Shelby County Jail.

RECOMMENDATION #1

1. I recommend that the Shelby County Jail add at least two additional positions to the office of the Court Expeditor to assist in gathering the healthcare data of Class and Subclass members as well as available community-based programs for presentation to the court in making its release, bond, and alternative placement decisions (such as GPS, mental health treatment programs, substance abuse treatment programs, board and care facilities, home detention, etc.) *The Shelby County Jail has added an additional position to the Court Expeditor function, but the main issue is that the defendants do not believe the Consent decree applies to this function and maintain that she cannot act as an advocate for the inmates. This need to be clarified or my comments regarding the ineffectiveness of the Court Expeditor on behalf of Class and Subclass members are irrelevant.*

FINDING #3

1. Contract tracing occurs in silos in the Shelby County Jail, and there is a significant reliance on schedules and self-reporting of exposure and significantly less on cameras and other real time comprehensive contact tracing. As a result, there is a serious risk of missing individuals who have been exposed to the Covid-19 virus, and an inadvertent introduction of the virus into the jail or the community.

RECOMMENDATION #1

1. It is my expert opinion that there should be an integrated approach to contract tracing involving reviewing camera footage, interviewing staff, reviewing schedules etc. in order to mitigate this problem. *This has been remedied. While I did not witness integrated contract tracing occurring, it was represented to me by Chief Fields that this does now occur when there is a Covid-19 positive case detected. On my next follow-up inspection, I will review the any contract tracing records that exist.*

FINDING #4

1. Staffing shortages at the Shelby County Jail cause Class and Subclass members to be locked in their cells oftentimes for days if not weeks at a time. In addition, Class

and Subclass members have not gotten any outdoor large muscle group exercise since my last inspection in June of 2020. The lack of large muscle group exercise and being confined in their cells for 24 hours a day for extended periods of time negatively impacts the mental and physical well-being of this already immunocompromised Class and Subclass population.

RECOMMENDATION #1

1. The Shelby County Jail Command Staff should institute a mandatory overtime program that fills all of the posted positions required to ensure the inmates in the jail get the minimum out of cell time recommended by the ACA while properly socially distancing. Inmates should have access to the rooftop yards and dayrooms from 0800hrs -2200hrs every day of the week. Giving the inmates their dayroom time and yard time will assist with their mental and physical well-being during this stressful time. [The Shelby County Jail has a mandatory overtime program in place. However, because over 30 Custody personnel were out sick from Covid-19 during my May 6-7 follow-up monitoring tour coupled with severe staffing shortages, the mandatory overtime program does little to mitigate the dangerous conditions of confinement and lack of out-of-cell time for inmates. Inmates, as of May 6-7, had very limited access to the Gym due to staffing shortages. I will make an additional recommendation regarding this issue below.](#)

FINDING #5

1. When bail is considered in Shelby County, the judicial commissioner setting bail does not take into account the economic ability or inability of the detainee to post bond. Nor does the Court Expeditor uniformly present to the Court health information about all at risk Class and Subclass members who could be placed in alternative structured and supervised environments thereby reducing their risk of serious illness or death without jeopardizing the safety of the public. Thus, in my expert opinion, the manner in which bond amounts are set discriminates against Class Members and Subclass members who may not be a current threat to public safety, but who are people of color and who simply cannot afford even a minimal bond. The current system is not necessary to ensure future court appearances or to protect public safety. Under this system, the Class Members and Subclass Members, most of whom are poor and people of color, are disproportionately held in custody simply because of their inability to afford to post a bond, and they are not being considered for alternative placements in structured and supervised environments despite their underlying health issues. This discrimination results in a disproportionate number of Class and Subclass, immunocompromised poor people of color, being subject to an unreasonable risk of serious illness or death from the Sars-COV-2 virus because they are held in custody solely because they are

economically disadvantaged. According to data I reviewed, as of September 2020, there were 351 inmates housed in the Shelby County Jail with bonds of less than \$2,000. While, I do not have the most recent data, I have no reason to believe the numbers are substantially different.

RECOMMENDATION #1

1. The Court, with the assistance of the Shelby County Jail Expeditor, should take into consideration an inmate's financial ability to post a bond as well as if they are a current threat to public safety when making release decisions, bond decisions, and placements in structured and supervised environments in the community. There is a significant number of inmates in the Shelby County Jail whose bonds are \$2,000 dollars or less. I reviewed the most recent bail information for the entire Shelby County inmate population, and my recommendation stands except that I believe inmates with bonds of \$50,000 dollars or less can be safely placed in alternative forms of custody. If all an inmate has to do is come up with \$5,000 dollars and he gets to go home, there is no current threat to public safety. However, the defendants contend that they have no authority to make release decisions or decisions regarding alternative forms of custody. The parties may wish to consider joining Shelby County as a party to this action to remedy this issue.

FINDING #6

1. I met with the men who are responsible for the Shelby County Jail ventilation system. Shelby County has spent 1.1 million dollars on the installation of Global Plasma Ionizers in the ventilation system. According to the marketing materials the Ionizers are 98 percent effective in killing the Covid-19 virus. I am unqualified to make that determination, but I did review the marketing materials and contract with the vendor.

RECOMMENDATION #1

1. The ventilation expert contemplated by the consent decree should be consulted in determining whether the GPS ionizers are sufficient to render the air quality in the jail safe. I understand there may be concerns, including within the CDC and ASHRAE, that these ionizers are not sufficient to mitigate the risk of aerosol spread of COVID-19. I am unqualified to make that determination, but I applaud the Shelby County Jail Command Staff for pursuing this solution. I did not revisit this issue on the May 6-7 follow-up inspection, and I am aware of no further actions in this area.

ADDITIONAL FINDINGS AND RECOMMENDATIONS FROM SECOND FOLLOW-UP COVID-19 INSPECTION ON MAY 6-7, 2021

FINDING #1

1. Inmate mask compliance in the Housing Units was poor. In spite of most of the Housing Units being direct supervision pods (A custody officer stationed inside the Housing Unit Pod), the inmate mandatory mask policy requiring all inmates to properly wear their masks at all times while out of their cells was not being enforced. In my expert opinion, there are two main reasons why the mandatory mask policy was not being enforced.

First, on most floors of the Shelby County Jail, there is a chronic staffing shortage and oftentimes there are not sufficient custody personnel to have an officer inside a single Housing Unit Pod full time. I witnessed officers having to go back and forth between Housing Unit Pods during their shift to supervise the inmates out in the dayrooms. As a result, these officers are spread too thin to complete all of their duties and mask enforcement falls by the wayside. I also witnessed rank and file officers not enforcing the mandatory mask order even when I was present in the Housing Unit Pod dayrooms. Lt. Styles had to intervene and direct the inmates to not only pull up their masks over their noses, but also in some cases to go get a mask from their cell or return to their cell.

Second, inmates and staff are suffering from Covid-19 fatigue, and the deck Sgts., Lts., and Cpts., are not properly supervising their subordinates and requiring them to enforce the mask mandates. This is an inexcusable failure of supervision.

RECOMMENDATION #1

1. The Shelby County Command Staff must firmly remind inmate Housing Unit Floor Supervisors that they are required to ensure the inmate mandatory mask orders are being enforced at all times, and to discipline rank and file officers who repeatedly fail to enforce the inmate mandatory mask policy.

RECOMMENDATION #2

1. Due to the severe custody staffing shortages in the Shelby County Jail, and their inability to staff critical posted positions on a daily basis, it is my expert opinion that this creates dangerous conditions of confinement for the Class and Sub-Class members. Consistent supervision of inmates is not occurring as a result inmates and staff are being placed at an unreasonable risk of harm. Therefore, it is my recommendation that the inmate population be reduced to the level at which there are sufficient custody staff available to fill the posted positions on each Housing

Unit floor to adequately supervise the inmate population and enforce policies, procedures, and directives designed to keep inmates, staff, and the public safe.

FINDING #2

1. Based on my review of the process by which the Shelby County Jail and Wellpath educate the inmate population on the benefits of taking the Covid-19 vaccination as discussed previously in this report, and the significant health risks of not taking the vaccination, it is my expert opinion that the vaccine education program at the Shelby County Jail is completely ineffective and needs to be restructured. Nor is there culturally competent vaccine education going on in the Shelby County Jail that addresses the deeply embedded distrust of government medical programs, and the misinformation that is prevalent in lower socioeconomic neighborhoods and communities of color.

In addition, the materials that have been provided are posted in places that are not readily accessible to inmates, nor has there been a concerted effort to conduct follow-up vaccine education of inmates in smaller groups by trusted community/religious leaders, sports figures, local celebrities, etc. apart from a PSA by President Obama, Charles Barkley, and Shaquille O'Neil.

RECOMMENDATION #1

1. Restructure the vaccine education program to include multiple contacts with the inmate population in small groups and individually at least every two weeks until the pandemic is over or until at least 70 percent of the inmate population has been vaccinated.

Recruit vaccinates inmates and train them to be peer vaccination educators/advocates in their Housing Unit Pods. Peer run programs are some of the most effective programs in custodial settings. Peers have instant credibility and can talk about their own experiences with taking the vaccine.

Develop a culturally competent vaccine education program that includes a cadre of community religious leaders, community-based organizations, sports figures, local celebrities, and medical professionals who meet with the inmates regularly to discuss the cultural distrust and misinformation regarding the Covid-19 vaccines.

RECOMMENDATION #2

1. As I discussed with Chief Fields and his staff while I was onsite May 6-7, 2021, I recommend that the Shelby County Jail incentivize taking the Covid-19 vaccine like so many other jails, prisons, cities, counties, and states are doing. There are a number of incentives that can be offered to inmates to take the vaccine that I believe

will dramatically increase the acceptance rate, and I defer to the Shelby County Jail to decide what types of incentives are appropriate for their inmates.

FINDING # 3

1. It is my expert opinion, that the Shelby County Jail vaccine administration program is completely ineffective in its current state.

First, the Shelby County Jail and its medical provider, Wellpath, have no control over any aspect of the vaccine administration. The City of Memphis controls the number of vaccine doses that are allocated to the jail, when the doses are administered, and the personnel who administer the vaccinations (EMTs). Wellpath is not authorized to administer the vaccines, nor are there any vaccines stored onsite at the Shelby County Jail. The only role Wellpath has in the vaccine administration program is to provide the City of Memphis with the number of vaccines they need.

On at least two occasions that of which I am personally aware, the scheduled dates for the vaccines to be administered to the inmates were postponed by the EMTs due to conflicts. This unnecessarily delayed a critical component of prevention/mitigation of the spread of the Covid-19 virus in the Shelby County Jail placing the inmates who requested to be vaccinated at an unreasonable risk of serious illness or death.

As I mentioned earlier in this report, we were able to recruit an additional 37 inmates to take the vaccine during my onsite follow-up inspection, but because the Shelby County Jail has no vaccines onsite, and they are not authorized to administer the vaccines, the 37 inmates had to wait over two weeks to get their first Covid-19 vaccine dose. Two weeks is a lifetime if there is a Covid-19 outbreak in the Shelby County Jail.

RECOMMENDATION # 1

1. The Shelby County Jail and Wellpath should ask that they be allowed to take control of the inmate vaccine program in all respects. The jail should be allowed to have a reserve of vaccines stored onsite in order to be able to administer shots within 24 hours of an inmate's request. The Moderna and Johnson and Johnson vaccines can be stored at normal refrigeration levels unlike the Pfizer vaccine. Inmates are very afraid of the Johnson and Johnson vaccine as a result of several bad outcomes that were widely reported in the press, and as a result I recommend offering the Moderna vaccine if possible. It is hard enough to overcome the existing distrust of government medical programs without adding the widely reported Johnson and Johnson vaccine issues to the mix. I recommend that the jail keep at least five hundred doses onsite so there are sufficient doses available to administer

to inmates if the acceptance rate ticks up as a result of an intensive education program and incentivizing taking the vaccine.

Wellpath, as the Shelby County Jail medical provider, has sufficient qualified medical professionals on staff in the jail to competently administer the Covid-19 vaccinations just like every other vaccine. There is no rational/legitimate reason why Wellpath should not be authorized to administer the Covid-19 vaccine to the staff and inmates at the Shelby County Jail upon request, and they should immediately be authorized to do so.

CONCLUSION

The Shelby County Jail leadership and Wellpath leadership continue to be completely transparent and willing to make adjustments where it is practical and within their power to do so.

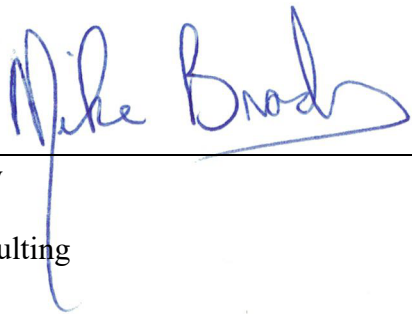
Some of the findings from this second follow-up inspection are the result of chronic and severe staffing shortages. Recruiting law enforcement officers in today's climate is challenging. Unfortunately, those severe and chronic staffing shortages result in unsafe conditions in the Shelby County Jail for Class and Subclass members.

Moreover, until the Shelby County Jail restructures their vaccine education and administration program, and the acceptance rate increases dramatically, Class and Subclass inmates at this population level will remain at an unreasonable risk of serious illness or death from the Covid-19 virus.

While there have been no reported Covid-19 positive cases since December of 2020, I do not have the same confidence in those numbers that the defendants do. This is not to say that the defendants are not making strong efforts to combat the introduction of the virus into the jail. It is to say that without serial testing periodically throughout the jail, asymptomatic Covid-19 positive inmates may be in the midst.

With a 63 percent Covid-19 test refusal rate at day 12 of incarceration, over 30 custody personnel being out sick from Covid-19, insufficient staffing to enforce Covid-19 prevention efforts consistently, insufficient staffing that prevents inmates from receiving out-of-cell time regularly for large muscle group exercise, and an ineffective vaccine education and administration program, it is my expert opinion that from the totality of the circumstances, Class Members and Subclass members are being placed at an unreasonable risk of harm for serious illness or death in the Shelby County Jail. Until these issues are resolved, it is my expert opinion, based on the totality of the circumstances that the Shelby County Jail population should be reduced significantly by placing inmates in community based alternative forms of custody or released on their own recognizance.

Respectfully submitted,



Mike Brady
Director
Sabot Consulting

May 30, 2021

Date